

類 科：專利師
科 目：專業英文
考試時間：2 小時

座號：_____

※注意：禁止使用電子計算器。

甲、申論題部分：(50 分)

- (一)不必抄題，作答時請將試題題號及答案依照順序寫在申論試卷上，於本試題上作答者，不予計分。
(二)請以藍、黑色鋼筆或原子筆在申論試卷上作答。
(三)本科目請以英文作答。

一、You are a patent attorney retained by the ABC Pharmaceutical (“ABC”), a foreign company, to file an invention patent application with the Intellectual Property Office for protecting its improved medication in our country.

(一)Before you start filing, Mr. Doe, the CEO of ABC, wonders whether this improved medication is a non-statutory subject matter for an invention patent according to our Patent Act?

Please provide your legal analysis in English with regard to this matter. (20 分)

(二)Mr. Doe acknowledges that, due to the outbreak of SARS (severe acute respiratory syndrome) and H1N1 pandemics occurred several years ago, the R.O.C. became the first country to issue a compulsory licensing for Tamiflu, an imported medication used to treat the H1N1 virus. Mr. Doe wonders on what grounds can our government issue a compulsory licensing?

Please provide your legal advice in English with regard to this matter. (20 分)

二、Please translate the following provision into English. (10 分)

專利法規定，發明專利申請人對於申請案公開後，曾經以書面通知發明專利申請內容，而於通知後公告前就該發明仍繼續為商業上實施之人，得於發明專利申請案公告後，請求適當之補償金。

乙、測驗題部分：(50 分)

代號：5701

- (一)本測驗試題為單一選擇題，請選出一個正確或最適當的答案，複選作答者，該題不予計分。
(二)共 25 題，每題 2 分，須用 2B 鉛筆在試卡上依題號清楚劃記，於本試題或申論試卷上作答者，不予計分。

1 The purpose of patents is to stimulate innovation by rewarding people for new inventions.

Which one of the following choices can be best substituted for the word “innovation”?

- (A) invincibility (B) creation (C) invasion (D) calmness

2 International patent and knowledge licensing is the most critical form of technology transfer to third world development.

Which one of the following choices can be best substituted for the word “critical”?

- (A) important (B) insignificant (C) impossible (D) presumptuous

3 When the examiner inappropriately combined some components selected from the prior art to fit the parameters of the invention, such determination of nonobviousness would fall in to the hindsight bias.

In the above paragraph, “bias” means:

- (A) prejudice (B) oblique (C) premonition (D) ground

4 The preliminary injunction the plaintiff seeks in the case of patent infringement is an extraordinary remedy. Besides the consideration of public interest, the irreparable harms must be proved to justify the order of injunction.

In the above paragraph, “irreparable” means:

- (A) inexplicable (B) inexorable (C) irrecoverable (D) irrebutable

5 The ultimate aim of the TRIPS Agreement is to achieve the goal of harmonization over the substantive patent law under various jurisdictions, by the adoption of the minimum standards of protection.

In the above paragraph, “harmonization” means:

- (A) unification (B) accordance (C) cooperation (D) assistance

6 The elements of patentability do not include which of the following:

- (A) novelty (B) utility (C) portability (D) nonobviousness

7 Which type of patent protection is not provided in the Patent Act of the United States?

- (A) utility patents (B) design patents (C) plant patents (D) working patents

8 After the decision of eBay v. MercExchange handing down from the Supreme Court in the United States, to grant the permanent injunction the court must consider the “four factors” before making the decision. Which one of the following choices is not within the “four factors”?

- (A) likelihood of success on the merits (B) irreparable harm
(C) public interest (D) paying sufficient bonds

9 In the United States, even though the inventor was first to invent, he may be barred if he publicly uses or sells it outside the twelve month grace period. What is the term to describe the situation?

- (A) periodical bar (B) statutory bar (C) insufficient bar (D) incomplete bar

10 Which one of the following treaties has no relationship with the patent protection?

- (A) Paris Convention
(B) Patent Cooperation Treaty
(C) Agreement on Trade-Related Intellectual Property Rights
(D) Nice Agreement

11 Which one of the following factors is most unlikely to be considered in a patent litigation in the United States?

- (A) Discovery Proceeding (B) Markman Hearing
(C) Criminal Penalty (D) Permanent Injunction

- 12 Which of the following reasons is not among the exceptions of the early publication of patent applications under Taiwanese patent law?
- (A) The patent application is protected by Taiwan Trade Secret Act as a subject matter of trade secret.
 - (B) The patent applicant withdrew the patent application within 15 months after the application date.
 - (C) The patent application is related to national defense secrets.
 - (D) The patent application is against public orders or moralities.
- 13 An invention patent application would be through the procedure of substantive examination prior to patent granting. Which of the following statements is true?
- (A) Within 18 months after the patent application, on request, the Intellectual Property Office should conduct a substantive examination over this application.
 - (B) Owing to interest conflicting, only the competitors of the applicant are entitled to requesting the substantive examination over the patent application.
 - (C) If no request for the substantive examination has been made in due time, the application is deemed to be withdrawn.
 - (D) The substantive examination over the patent application should be requested after this application has been published according to Taiwanese patent law.
- 14 A license under which the licensor grants the right to use a patent to licensee under the condition that the licensee agrees to grant the licensor a license with respect to any improvements to that patent made by the licensee is often called:
- (A) a grant back license
 - (B) a grant forward license
 - (C) an exclusive license
 - (D) a sublicense
- 15 Which one of the following descriptions related to the Intellectual Property Case Adjudication Act is incorrect?
- (A) The court should judge the validity of patent by itself in a patent litigation.
 - (B) There has been the mechanism of Technical Examination officer in such legal infrastructure.
 - (C) The design of confidentiality preservation order in the Act has the purpose to protect trade secrets.
 - (D) Adding the criminal penalty to the invasion of trade secrets is one important character to the Act.
- 16 One of the most controversial areas of customs law concerns “gray market goods”.
What is the term to describe the importation of gray market goods?
- (A) vertical importation
 - (B) random importation
 - (C) cross importation
 - (D) parallel importation
- 17 The traditional American rule that each party bears its own attorneys’ fees is varied by statute in patent law. In an exceptional case, the prevailing party may be granted such fees.
Which one of the following choices can be best substituted for the word “prevailing”?
- (A) losing
 - (B) winning
 - (C) coming
 - (D) defending

18 For the most part, patents are granted to inventors according to national law. Thus, patents represent _____ grants of exclusive rights.

Fill in the blank with the best answer from the following choices.

- (A) collapsible (B) territorial (C) collateral (D) tiny

19 The failure of an invention to meet with the requirement of novelty under patent law usually resulted from _____ of the prior art.

- (A) preemption (B) suggestion (C) anticipation (D) instruction

20 A patent infringed may be determined by _____ when an accused product performed substantially the same function in substantially the same way to have the same result with what the patent did, provided that the manufacture of the accused product didn't constitute literal infringement.

- (A) the compulsory licensing (B) the prior art defense
(C) the all-element doctrine (D) the doctrine of equivalents

21 On claim drafting, a patent applicant sometimes uses a term in a manner leading to an either more restrictive or expansive meaning than its ordinary construction. Such a phenomenon in the patent practice means that _____ may be followed to define patent claims.

Choose the one phrase that best completes the above sentence.

- (A) the prosecution history (B) the inventor's lexicography
(C) the expert's testimony (D) the prior art

22 On determination of nonobviousness of a combination invention, the examiner is always concerned about _____, which means a combination of elements may produce a technological effect greater than that caused by the sum of those elements taken together.

Choose the one word that best completes the above sentence.

- (A) synergism (B) inherency (C) collaboration (D) deposition

23 _____ is an illustrative example of practice of an invention, included in a patent specification.

Choose the one phrase that best completes the above sentence.

- (A) A claim (B) An embodiment
(C) An abstract (D) A related application

24 An official procedure starting from the patent application to the granting of patent is named as _____.

Choose the one phrase that best completes the above sentence.

- (A) patent licensing (B) patent searching (C) patent filing (D) patent prosecution

25 The requirement of _____ for patentability is to secure that the public is entitled to practice the invention according to a full and complete description of it in the specification, especially when the patent expires.

Choose the one word that best completes the above sentence.

- (A) novelty (B) utility (C) enablement (D) nonobviousness